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NO. _____

Supreme Court, U.S. FILED MAY 12 1987 JOSEPH F. SPANIOL, JR. CLERK
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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

DAN L. FLAUGH, PETITIONER

VS

STATE OF MICHIGAN, RESPONDENT

WRIT OF CERTIORARI TO THE SUPREME COURT
FOR THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT

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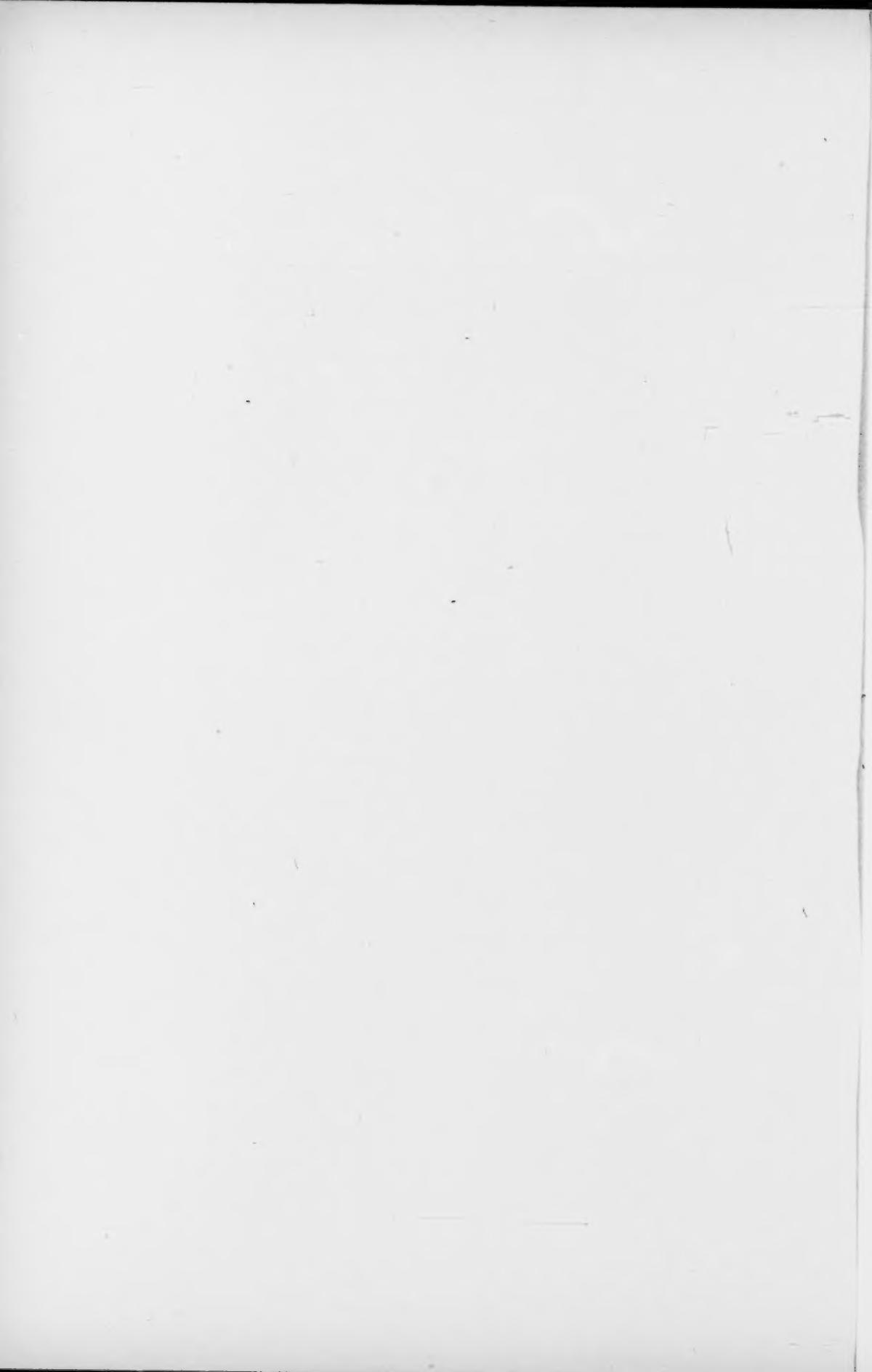


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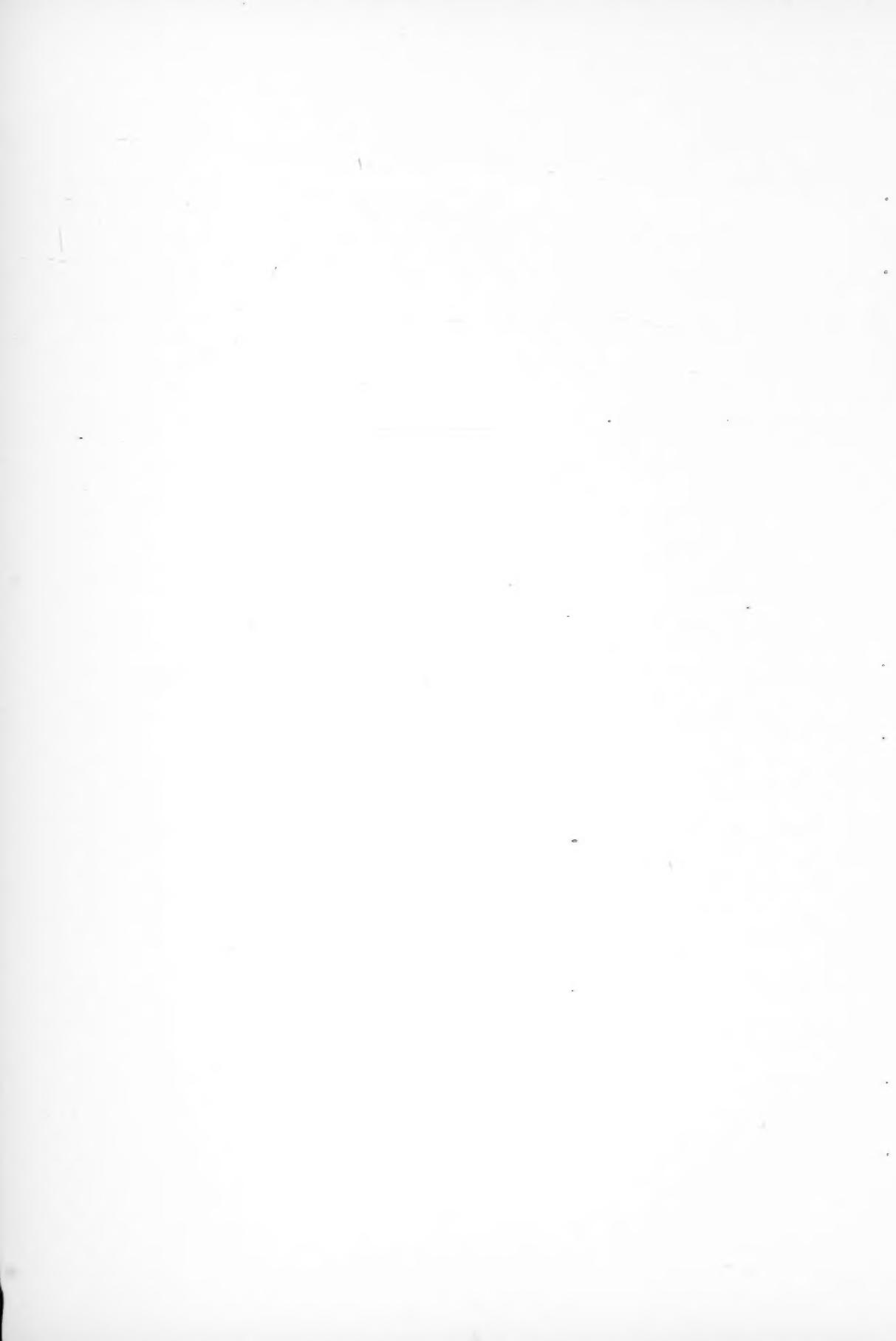
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QUESTION PRESENTED

Should Petitioner's Writ of Certiorari be granted where Petitioner merely requests this Court to apply established law to a particular fact situation and where Petitioner has failed to demonstrate that the state courts have decided a federal question in a way that conflicts with decisions of other state courts, of a federal court of appeals or of this Court?



STATEMENT OF THE CASE

Petitioner was convicted by a jury of Arson of a Dwelling House and Conspiracy to Commit Arson on November 30, 1984. Petitioner subsequently filed a Motion for a New Trial raising numerous allegations of ineffective assistance. A lengthy evidentiary hearing was held on the motion at which Petitioner's retained trial attorney, among others, testified. Petitioner's trial attorney explained many of his actions and strategies he chose to utilize during the trial. The trial court denied Petitioner's Motion and Petitioner appealed to the Michigan Court of Appeals. That Court, in a unanimous unpublished per curiam opinion, affirmed Petitioner's conviction. The Court specifically found that the performance of Petitioner's trial counsel met the standards enunciated in Strickland v



Washington, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984), reh den 467 US 1267; 104 S Ct 3562; 82 L Ed 2d 864 (1984) and People v Garcia, 398 Mich 250; 247 NW2d 547 (1976).

Petitioner next filed an application for leave to appeal in the Michigan Supreme Court which was denied without dissent on January 26, 1987.



SUMMARY OF ARGUMENT

THE WRIT OF CERTIORARI SHOULD NOT BE GRANTED BECAUSE IT DOES NOT PRESENT THE COURT WITH AN OPPORTUNITY TO DECIDE AN IMPORTANT QUESTION OF LAW AND THE STATE COURTS HAVE CORRECTLY DISPOSED OF PETITIONER'S CONTENTIONS.

ARGUMENT

Petitioner requests this Court to hold that his right to counsel was denied within the standards recently set forth in Strickland, supra. He does not request that the Court re-examine the holding of Strickland. Nor has he presented the Court with the opportunity to decide any other important question of federal law. Further, he has failed to even allege that the state court opinion here conflicts with decisions of other state courts, of a federal court of appeals or of this Court. In sum, Petitioner has not identified one factor set forth in Rule 17 which would make this writ a likely candidate for being granted.



Petitioner wants this Court to take his case up in order to apply an established rule of law. The state courts have correctly applied the applicable rule. Indeed, the Michigan Court of Appeals held that Petitioner's right to counsel was satisfied even under the more protective (to defendant) standard of People v Garcia, supra. Petitioner has not demonstrated that his federal constitutional right to counsel has been violated.

CONCLUSION

Respondent respectfully requests that the Petition for Writ of Certiorari be DENIED.

DATED: May _____, 1987

Respectfully submitted,

PAUL L. MALONEY
Prosecuting Attorney
Attorney For Respondent
Berrien County, Michigan

/ks

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PROOF OF SERVICE

KATHLEEN A. SCIENSKI, being first duly sworn, deposes and states that on the _____ day of May, 1987, she served the original and 40 copies of Respondent's Appearance, Brief, and Proof of Service in the above referenced matter by depositing in a government mail receptacle in St. Joseph, Michigan, enclosed in a sealed envelope plainly addressed to: Clerk, Supreme Court of the United States, Washington, D.C. 20543; and three (3) copies of the same to:

Mr. Tat Parish, Attorney at Law, 711 Pleasant Street, P.O. Box 409, St. Joseph, MI 49085; and three (3) copies of the same also to: The Honorable Frank J. Kelly, Attorney General, State of Michigan, 525 W. Ottawa Street, Lansing, MI 48913; with first class postage thereon fully prepaid.

KATHLEEN A. SCIENSKI

Subscribed and sworn to before me, a Notary Public in and for the County of Berrien, this _____ day of May, 1987.

LYNN A. LANGE, Notary Public
Berrien County, Michigan
My Commission Expires: 3/14/88